Lakeside Community Hospital, Inc. *and* Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL–CIO. Cases 20–CA–23437, 20–CA–23996, and 20–CA–24174

February 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 28, 1991, in Cases 20–CA–23437 and 20–CA–23996, and on September 26, 1991, in Case 20–CA–24174, the General Counsel of the National Labor Relations Board issued complaints alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20–RC–16586.[1] (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed answers admitting in part and denying in part the allegations in the complaints issued in Cases 20–CA–23996 and 20–CA–24174.

On January 21, 1992, the General Counsel filed a Motion for Summary Judgment. On January 28, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment[2]

In its answers the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election and the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment with respect to the complaint allegations in Cases 20–CA–23996 and 20–CA–24174 alleging that the Respondent has refused to bargain with the Union after its certification.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a health care institution with a place of business at Lakeport, California, where it operates an acute care hospital. During the calendar year ending December 31, 1991, Respondent had gross revenues in excess of $250,000 and purchased products, goods, and materials valued over $5000 which originated from outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of

[1] The General Counsel consolidated these cases by Orders dated June 28, 1991, and September 26, 1991, respectively.

[2] On July 12, 1991, Respondent filed a motion to dismiss the complaint in Case 20–CA–23437 on the grounds that ''the allegations are not based upon a proper or timely charge.'' In essence, Respondent relies upon the fact that the events alleged in the complaint in Case 20–CA–23437 occurred after the filing of the charge. On January 13, 1992, the Regional Director denied Respondent's motion on the ground that the matters alleged in the complaint were closely related to the charge and that there is a ''factual and legal nexus between the charge allegations and the otherwise untimely allegations . . . .'' On January 23, 1992, Respondent filed a request for special permission to appeal the Regional Director's decision. Respondent argues that the motion was not properly before the Regional Director under Sec. 102.24 of the Rules. We agree. See 54 Fed. Reg. 38515 (Sept. 19, 1989).

Accordingly, we have granted Respondent's request and have considered the motion de novo. The motion is denied. The allegations of the complaint are of ''the same class of violations as those set up in the charge.'' *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959). Moreover, the Board is not precluded from ''dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board.'' *National Licorice v. NLRB*, 309 U.S. 350, 369 (1940), cited in *Fant Milling* at 309. See also *Nickles Bakery*, 296 NLRB 927 (1989).

Having denied the motion to dismiss, we shall remand Case 20–CA–23437 to the Regional Director to permit Respondent to file a timely answer to the complaint. (See R. 12, Fed.R.Civ.P.) Accordingly, we deny the Motion for Summary Judgment as it applies to this case.

[3] In addition to the allegations of a general refusal to bargain, the complaints in these two cases allege certain unilateral changes. All of those alleged in Case 20–CA–24174, and the one alleged in par. 6(a) in Case 20–CA–23996, are admitted by the Respondent. Thus, the Respondent admits that during the period of time after the election, it granted bonuses and pay raises to its employees. Accordingly, as to these allegations, we grant the Motion for Summary Judgment. As to those alleged unilateral changes in Case 20–CA–23996 that are denied by the Respondent, we shall remand those matters to the Regional Director for further appropriate proceedings.

Although we are also remanding Case 20–CA–23437, no purpose would be served by remanding this entire matter. Respondent is clearly challenging the certification in Case 20–RC–16586 and that challenge is squarely presented by the complaints and answers in Cases 20–CA–23996 and 20–CA–24174. We find that it will effectuate the purposes and policies of the Act to sever the remanded cases from this proceeding and thus expedite the resolution of the challenge to the certification.

the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held May 2 and 3, 1990, the Union was certified on May 17, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time professional employees employed by the Employer at its Lakeport, California, facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

Since on or about May 3, 1990, the Union has been the exclusive representative by virtue of Section 9(a) of the Act.

B. *Refusals to Bargain*

(1) Since May 24, 1991, the Union has requested the Respondent to meet and bargain and, since May 24, 1991, the Respondent has refused.

(2) On or about January 1991 Respondent granted a wage increase to unit employees.

(3) On or about July 1991 Respondent informed its employees that they would be given a choice of receiving a 7-percent wage increase or a 4-percent bonus and a 4-percent increase; on or about August 2, 1991, Respondent granted a bonus to unit employees; on or about August 4, 1991, Respondent granted a wage increase to unit employees.

Respondent took the actions described in two and three above without providing the Union with notice of or an opportunity to bargain about those matters.

We find that these actions constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after May 24, 1991, to meet and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, by on or about July 1991 informing employees that they would be given a choice of receiving a 7-percent wage increase or a 4-percent bonus and a 4-percent wage increase, by on or about August 2, 1991, granting a bonus and by on or about August 4, 1991, granting a wage increase to unit employees without notice to or bargaining with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist,[4] to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Lakeside Community Hospital, Inc., Lakeport, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Informing employees that they would be given a choice of receiving a 7-percent wage increase or a 4-percent bonus and a 4-percent wage increase and granting employees bonuses and wage increases without affording the Union notice of and an opportunity to bargain about these changes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time professional employees employed by the Employer at its

[4] Although we are ordering Respondent to cease and desist from such conduct, our order is not to be construed as a requirement that Respondent rescind such benefits as were granted.

> Lakeport, California, facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

(b) Post at its facility in Lakeport, California, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 20–CA–23437 and the remaining portions of Case 20–CA–23996 be severed from this proceeding and remanded to the Regional Director for Region 20 for further action consistent with the Decision.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to meet and bargain with Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT inform employees that they will be given a choice between a wage increase and a bonus or grant pay increases and bonuses without affording the Union notice of and an opportunity to bargain about these changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time professional employees employed by the Employer at its Lakeport, California, facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

LAKESIDE COMMUNITY HOSPITAL, INC.